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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2009-169

12 DANA RICHARD HOWARD,
a.k.a. DANA HOWARD
13 6632 Terrace Way
Harrisburg, PA 17111

ACCUSATION

14 Registered Nurse License No. 673964

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
21 ("Board"), Department of Consumer Affairs.

22 2. On or about February 17, 2006, the Board issued Registered Nurse License
23 Number 673964 to Dana Richard Howard, also known as Dana Howard ("Respondent").
24 Respondent's registered nurse license was in full force and effect at all times relevant to the
25 charges brought herein and will expire on May 31, 2009, unless renewed.

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1 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
2 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
3 practitioner, or physician assistant, when in stock in containers correctly
labeled with the name and address of the supplier or producer . . .

4 8. Health and Saf. Code section 11173, subdivision (a), states, in pertinent
5 part, that "[n]o person shall obtain or attempt to obtain controlled substances, or procure or
6 attempt to procure the administration of or prescription for controlled substances, (1) by fraud,
7 deceit, misrepresentation, or subterfuge . . ."

8 COST RECOVERY

9 9. Code section 125.3 provides, in pertinent part, that the Board may request
10 the administrative law judge to direct a licentiate found to have committed a violation or
11 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
12 and enforcement of the case.

13 CONTROLLED SUBSTANCES AT ISSUE

14 10. "Dilaudid", a brand of hydromorphone, is a Schedule II controlled
15 substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(K).

16 11. "Fentanyl" is a Schedule II controlled substance as designated by Health
17 and Saf. Code section 11055, subdivision (c)(8).

18 12. "Meperidine", a derivative of pethidine, is a Schedule II controlled
19 substance as designated by Health and Safety Code section 11055, subdivision (c)(17).

20 13. "Morphine" is a Schedule II controlled substance as designated by Health
21 and Saf. Code section 11055, subdivision (b)(1)(M).

22 14. "Percocet," a brand of oxycodone, is a Schedule II controlled substance as
23 designated by Health and Saf. Code section 11055, subdivision (b)(1)(N).

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Diversion and Possession of Controlled Substances)**

3 15. Respondent is subject to disciplinary action pursuant to Code section
4 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
5 2762, subdivision (a), in that on or about and between September 1, 2007, and October 6, 2007,
6 while employed by On Assignment, a traveling nurse registry in Cincinnati, Ohio, and assigned
7 to work at Rideout Memorial Hospital ("RMH") in Marysville, California, Respondent did the
8 following:

9 **Diversion of Controlled Substances:**

10 a. Respondent obtained the controlled substances Dilaudid, Fentanyl,
11 Meperidine, Morphine Sulfate, and Percocet by fraud, deceit, misrepresentation, or subterfuge, in
12 violation of Health and Saf. Code section 11173, subdivision (a), as follows: On or about and
13 between September 1, 2007, and October 6, 2007, Respondent removed varying quantities of the
14 controlled substances Dilaudid, Fentanyl, Meperidine, Morphine Sulfate, and Percocet under the
15 names of multiple patients from the Acudose (a medication dispensing system requiring the user
16 to enter a personal identification number) when there were no physicians' orders for the
17 medications. Further, Respondent failed to chart the administration or wastage or otherwise
18 account for the disposition of the Dilaudid, Fentanyl, Meperidine, Morphine Sulfate, and
19 Percocet in the Medication Administration Record ("MAR") or Nurse's Notes/Flowsheet
20 ("NNF") to conceal his diversion of the medications, as more particularly set forth in paragraph
21 16 below.

22 **Possession of Controlled Substances:**

23 b. On the dates indicated above, Respondent possessed unknown quantities
24 of the controlled substances Dilaudid, Fentanyl, Meperidine, Morphine Sulfate, and Percocet
25 without a valid prescription from a physician, dentist, podiatrist, optometrist, veterinarian, or
26 naturopathic doctor, in violation of Code section 4060.

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SECOND CAUSE FOR DISCIPLINE

(False Entries in Hospital/Patient Records)

16. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (e), in that on or about and between September 1, 2007, and October 6, 2007, while on duty as a registered nurse at RMH, Marysville, California, Respondent falsified, or made grossly incorrect, grossly inconsistent, or unintelligible entries in hospital, patient, or other records pertaining to the controlled substances Dilaudid, Fentanyl, Meperidine, Morphine Sulfate, and Percocet, as follows:

a. On September 1, 2007, at 1852, 2002, 2128, 2248, and 2326 hours, Respondent withdrew 4 mg of Morphine Sulfate each time from the Acudose under patient A's name when there were no physician's orders for the medication. Respondent charted the administration of 2 mg of Morphine Sulfate at 1930 hours and 4 mg at 2030, 2130, 2300 and 2330 hours, but failed to chart the administration or wastage of the remaining 2 mg in the patient's MAR or NNF or otherwise account for the disposition of the medication.

b. On September 1, 2007, at 2128 hours, Respondent withdrew 25 mg of Meperidine from the Acudose under patient A's name when there were no physician's orders for the medication. Further, Respondent failed to chart the administration or wastage of the 25 mg of Meperidine in the patient's MAR or NNF or otherwise account for the disposition of the medication.

c. On September 2, 2007, at 0037, 0144, 0247, 0453, and 0624 hours, Respondent withdrew 10 mg of Morphine Sulfate each time from the Acudose under patient A's name. Respondent charted the administration of 5 mg of Morphine Sulfate each time at 0030, 0130, 0300, and 0630 hours, but failed to chart the administration or wastage of the remaining 30 mg of Morphine Sulfate in the patient's MAR or NNF or otherwise account for the disposition of the medication.

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1 d. On September 6, 2007, at 0456 hours, Respondent withdrew 4 mg of
2 Morphine Sulfate from the Acudose under patient B's name. Respondent charted the
3 administration of Morphine Sulfate at 0455 hours, but failed to chart the amount of the
4 medication administered to the patient or the amount wasted in the patient's MAR or NNF or
5 otherwise account for the disposition of the medication.

6 e. On September 6, 2007, at 0502 hours, Respondent withdrew 10 mg of
7 Morphine Sulfate from the Acudose under patient B's name. Respondent charted the
8 administration of Morphine Sulfate at 0530 and 0545 hours, but failed to chart the amount of the
9 medication administered to the patient or the amount wasted in the patient's MAR or NNF or
10 otherwise account for the disposition of the medication.

11 f. On September 8, 2007, at 2040, 2053, and 2241 hours, Respondent
12 withdrew 4 mg of Morphine Sulfate each time from the Acudose under patient B's name.
13 Respondent charted the administration of 4 mg of Morphine Sulfate each time at 2035, 2055, and
14 2230 hours. According to Respondent, the patient was under sedation each time the Morphine
15 Sulfate was administered. Inconsistent with Respondent's statement in the patient's NNF that
16 the patient was "medicated for presumed pain", Respondent failed to chart any pain levels on the
17 pain scale.

18 g. On September 8, 2007, at 2155 and 2241 hours, Respondent removed 2
19 mg of Dilaudid each time from the Acudose under patient C's name. Respondent charted the
20 administration of .2 mg of Dilaudid each time at 2045, 2200, 0115, and 0445 hours, but failed to
21 chart the administration or wastage of the remaining 3.2 mg of Dilaudid in the patient's MAR or
22 NNF or otherwise account for the disposition of the medication.

23 h. On September 9, 2007, at 0057, 0159, 0440, and 0630 hours, Respondent
24 withdrew 2 mg of Dilaudid each time from the Acudose under patient C's name. Respondent
25 wasted 2 mg of Dilaudid through the Acudose machine at 0204 hours and 1.6 mg at 0454 hours,
26 but failed to chart the administration or wastage of the remaining 4.4 mg in the patient's MAR or
27 NNF or otherwise account for the disposition of the medication.

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1 i. On September 13, 2007, at 2116 and 2239 hours, Respondent withdrew 4
2 mg of Morphine Sulfate each time from the Acudose under patient D's name when there were no
3 physician's orders for the medication. Further, Respondent charted the administration of
4 Morphine Sulfate at 2130 and 2240 hours, but failed to chart the amount of the medication
5 administered to the patient or the amount wasted in the patient's MAR or NNF or otherwise
6 account for the disposition of the medication.

7 j. On September 14, 2007, at 0412, 0541, and 1857 hours, Respondent
8 withdrew 4 mg of Morphine Sulfate each time from the Acudose under patient D's name when
9 there were no physician's orders for the medication. Further, Respondent charted the
10 administration of 2 mg of Morphine Sulfate at 0540 hours, but failed to chart the administration
11 or wastage of the remaining 10 mg in the patient's MAR or NNF or otherwise account for the
12 disposition of the medication.

13 k. On September 14, 2007, at 0541 hours, Respondent withdrew two tablets
14 of Percocet from the Acudose under patient D's name. Respondent then removed an additional
15 tablet of Percocet at 0553 hours. Respondent failed to chart the administration or wastage of the
16 3 tablets of Percocet in the patient's MAR or NNF or otherwise account for the disposition of the
17 medication.

18 l. On September 15, 2007, at 0420 hours, Respondent withdrew 4 mg of
19 Morphine Sulfate from the Acudose under patient D's name when there were no physician's
20 orders for the medication. Further, Respondent failed to chart the administration or wastage of
21 the 4 mg of Morphine Sulfate in the patient's MAR or NNF or otherwise account for the
22 disposition of the medication.

23 m. On September 17, 2007, at 2023 hours, Respondent withdrew 4 mg of
24 Morphine Sulfate from the Acudose under patient E's name. Respondent failed to chart the
25 administration or wastage of the 4 mg of Morphine Sulfate in the patient's MAR or NNF or
26 otherwise account for the disposition of the medication.

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1 n. On September 18, 2007, at 0020 hours, Respondent withdrew 4 mg of
2 Morphine Sulfate from the Acudose under patient E's name. Respondent failed to chart the
3 administration or wastage of the 4 mg of Morphine Sulfate in the patient's MAR or NNF or
4 otherwise account for the disposition of the medication.

5 o. On September 18, 2007, at 1913 and 2302 hours, Respondent withdrew 10
6 mg of Morphine Sulfate each time from the Acudose under patient F's name. Respondent
7 charted the administration of 2 mg at 1900 hours and 5 mg at 2315 hours, but failed to chart the
8 administration or wastage of the remaining 13 mg of Morphine Sulfate in the patient's MAR or
9 NNF or otherwise account for the disposition of the medication.

10 p. On September 18, 2007 at 2023 and 2136 hours, Respondent withdrew 4
11 mg of Morphine Sulfate each time from the Acudose under patient F's name. Respondent
12 charted the administration of 4 mg at 2015 hours, but failed to chart the administration or
13 wastage of the remaining 4 mg of Morphine Sulfate in the patient's MAR or NNF or otherwise
14 account for the disposition of the medication.

15 q. On September 19, 2007, at 0422 hours, Respondent withdrew 10 mg of
16 Morphine Sulfate from the Acudose under patient F's name. Respondent failed to chart the
17 administration or wastage of the 10 mg of Morphine Sulfate in the patient's MAR or NNF or
18 otherwise account for the disposition of the medication.

19 r. On September 27, 2007, at 1905, 2021, and 2140 hours, Respondent
20 withdrew 2 ml of Fentanyl each time from the Acudose under patient G's name. Respondent
21 failed to chart the administration or wastage of the 6 ml of Fentanyl in the patient's MAR or
22 NNF or otherwise account for the disposition of the medication.

23 s. On September 28, 2007, at 0006, 1905, and 2036 hours, Respondent
24 withdrew 2 ml of Fentanyl each time from the Acudose under patient G's name. Respondent
25 charted the administration of Fentanyl at 0140, 1900, and 2045 hours, but failed to chart the
26 amount of the medication administered to the patient or the amount wasted in the patient's MAR
27 or NNF or otherwise account for the disposition of the medication.

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1 t. On September 28, 2007, at 0223, 0320, 0616, 2059, and 2235 hours,
2 Respondent withdrew 2 ml of Fentanyl each time from the Acudose under patient G's name.
3 Respondent failed to chart the administration or wastage of the 10 ml of Fentanyl in the patient's
4 MAR or NNF or otherwise account for the disposition of the medication.

5 u. On October 4, 2007, at 1859, 2045, and 2155 hours, Respondent withdrew
6 10 mg of Morphine Sulfate each time from the Acudose under patient H's name. Respondent
7 charted the administration of 6 mg of Morphine Sulfate each time at 1930 and 2145 hours, but
8 failed to chart the administration or wastage of the remaining 18 mg in the patient's MAR or
9 NNF or otherwise account for the disposition of the medication.

10 v. On October 5, 2007, at 0042, 0429, 0547, 1859, 2110, and 2335 hours,
11 Respondent withdrew 10 mg of Morphine Sulfate each time from the Acudose under patient H's
12 name. Respondent charted the administration of 6 mg of Morphine Sulfate each time at 0100
13 and 2330 hours and the administration of 5 mg at 0430 and 2330 hours, but failed to chart the
14 administration or wastage of the remaining 38 mg in the patient's MAR or NNF or otherwise
15 account for the disposition of the medication.

16 w. On October 6, 2007, at 0220, 0310, and 0629 hours, Respondent withdrew
17 10 mg of Morphine Sulfate each time from the Acudose under patient H's name. Respondent
18 charted the administration of 6 mg of Morphine Sulfate each time at 0230 and 0330 hours, but
19 failed to chart the administration or wastage of the remaining 18 mg in the patient's MAR or
20 NNF or otherwise account for the disposition of the medication.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein
23 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:


24 1. Revoking or suspending Registered Nurse License Number 673964, issued
25 to Dana Richard Howard, also known as Dana Howard;

26 2. Ordering Dana Richard Howard, also known as Dana Howard, to pay the
27 Board of Registered Nursing the reasonable costs of the investigation and enforcement of this
28 case, pursuant to Business and Professions Code section 125.3; and

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3. Taking such other and further action as deemed necessary and proper.

DATED: 11/29/09


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant